
(2012) 09 GAU CK 0003
In the Gauhati High Court
Case No : WP (C) No. 6360 of 2011

Golok Barman

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Citation : (2013) 3 GLT 763

Hon'ble Judges : Prasanta Kumar Saikia, J; Amitava Roy, J

Bench : Division Bench

Advocate : M. Chanda, Ms. U. Dutta and Mr. S. Nath, for the Appellant; A.K. Sarkar, Standing Counsel, N.F. Railways, for the Respondent

Judgement

Amitava Roy, J.—In challenge is the judgment and order dated 28.6.2010 rendered by the learned Central Administrative Tribunal, Gauhati Bench, Guwahati (for short, hereinafter referred to as "the Tribunal") in Original Application No. 266 of 2007 disposing therewith as well M.P. No. 88 of 2010. We have heard Mr. M. Chanda, learned counsel for the petitioner assisted by Ms. U. Dutta and Mr. S. Nath, Advocates and Mr. A.K. Sarkar, learned Standing Counsel, NF Railways for the respondents.

2. The facts in brief to comprehend better the rival submissions can be assembled from the rival pleadings. The petitioner who was appointed as a Junior Clerk on 28.5.1985 with the respondent Railways was promoted as Senior Clerk on 19.9.1993. While posted at Maligaon he earned further promotion to the post of Head Clerk (E) under CPO, Maligaon. Consequent upon an administrative decision, the Rangiya Unit of the erstwhile Alipurduar Division of the NF Railways was bifurcated to constitute an independent Division and, as a matter of fact, it came into existence as such with effect from 1.4.2003. In order to appropriately configure the two Divisions following the bifurcation as contemplated, it was decided that the actual staff of the Personnel Branch of the Alipurduar Division will be divided in the ratio of 50:50. For this out of the 163 clerical staff serving in the Personnel Branch of the Alipurduar Division, 22 were identified to be non-

divisible and on the apportionment of the remaining 141, the Rangiya Division was allotted 70 posts. At the time of creation of the Rangiya Division there, however, existed 10 posts in the Personnel Branch and thereafter 16 more serving personnel came from different divisions thereto. This notwithstanding, though the petitioner had opted for the Rangiya Division prior to 1.11.2003 and was in fact taken in its rolls before that date, he was eventually spared from the office of the CPO, Maligaon on 28.11.2003 (A/N) and did actually join the Rangiya Division on 1.12.2003.

3. According to the petitioner, in view of the above sequence of events his name was included for consideration for upgradation at the Rangiya Division in terms of the Railway Board's letter No. PC-III/2003/CRC/6 dated 9.10.2003 (for short, hereinafter referred to as "Instructions on Restructuring/IOR") followed as policy guidelines on the subject, it being his specific case that he had never been considered for upgradation at Maligaon before he was released therefrom on 28.11.2003. The petitioner has pleaded that though following the policy decision of bifurcation of the Alipurduar Division by constituting the Rangiya Division the cadre of the latter was closed with effect from 1.11.2003, only 10 posts out of the 71 earmarked to be sliced away from the Alipurduar Division were transferred by that date and the remaining 61 posts were allocated to it (Rangiya Division) on various dates by communications No. E/191/AP(C)RNY-Divn/47/A dated 10.6.2004, No. E/191/AP(C)RNY-Divn/47/A dated 6.1.2005 and No. E/191/AP(C)RNY-Divn/47/A dated 14.11.2005 transferring 20, 9 and 32 posts respectively in installments.

3A. In the above view of the matter, the Divisional Railway Manager (P) Rangiya by his letter No. EQ/Labour Court/RNY Pt.I dated 23.2.2007 addressed to the General Manager (P), NF Railways, Maligaon pointed out that restructuring of the Rangiya Division with effect from 1.11.2003 in view of the delayed release of 61 posts had in fact been effected only for 76 posts and that a fresh exercise ought to be undertaken for ex-tending fee restructuring benefit to the deserving members of the staff. It was inter alia pointed out in the said letter that the staff who had joined the Rangiya Division after 1.11.2003 had not been accorded any restructuring benefit in the earlier place of posting i.e. in the parent division/unit and that as contemplated they could not get the restructuring benefit with effect from 1.11.2003 on the basis of 121 posts allotted to the Division. This proposal was turned down by the respondent Railways and the decision to that effect was communicated to the DPO/RNY, NF Railway vide letter No. E/283/1(Rest)(Q) dated 8.8.2007. Being aggrieved, the petitioner approached the learned Tribunal.

4. The respondent Railways in their written statement while admitting the bifurcation of the Alipurduar Division and creation of the Rangiya Division as well as the decision to apportion the posts of the former in the ratio of 50:50, conceded that 70 posts earmarked for the Rangiya Division were not transferred at a time by the Alipurduar Division and in fact the staff were transferred in a phased manner. Referring to the IOR, the respondents averred that restructuring

of cadres was to be with reference to the sanctioned strength as on date following the date on which the cadre in the headquarter offices of new Zonal Railways/new Divisions were closed and that the said benefit was to be restricted to the persons who were in a particular cadre on the cut off date and in terms of paragraph 3.1 of the Railways Board's letter No. PC/III/2003/CRC/6 dated 6.1.2004. Contending that the cadre of the Rangiya Division was closed with effect from 1.11.2003, they referred to a meeting held on 3.2.2005 with regard to cadre restructuring of Rangiya Division which inter alia recorded that the same would be done on the basis of the posts available as on 1.11.2003 and that in case the number of incumbents were more as on 1.11.2003, the posts transferred to Rangiya Division after 1.11.2003 would be notionally taken into account for restructuring to the extent of the number not available in the concerned unit. They, therefore, admitted that the restructuring of the clerical cadre of the Personnel Branch of the Rangiya Division was done on 31.3.2005 on the total strength of 76 posts existing as on 1.11.2003. Reference was also made of the letter No. E.283/218(HQ)(C) dated 5.4.2004 of the General Manager (P), Maligaon to the effect in essence that the staff who had joined the Rangiya Division/HQ before or after 1.11.2003 would get the benefit of restructuring at their original place of posting. According to them, in terms of this letter the restructuring of the clerical cadre was done in the Alipurduar Division and 61 posts referred to in the communications dated 10.6.2004, 6.1.2005 and 14.11.2005 were transferred to the Rangiya Division in succeeding phases.

5. Adverting to the Railway Board's letter No. PC-III/2003/CRC/6 dated 6.1.2004, the respondents pleaded that all vacancies arising out of the restructuring were to be filled up by senior employees who were to be given the benefit of promotion with effect from 1.11.2003 whereas the junior employees were to be posted by modified selection procedure. According to them, the petitioner having joined the Rangiya Division on 1.12.2003 i.e. after 1.11.2003 restructuring was carried out by the General Manager (P), Maligaon based on the instructions contained in the letter dated 5.4.2004 and in the process, 19 staff were promoted as per PBR and seniority. They stated that having regard to his placement at serial No. 50 in the seniority list at Maligaon where he had been serving, his case did not come within the purview of promotion against restructuring of cadre on seniority and suitability basis. They endorsed the validity of the impugned decision by referring to Para 19 of the IOR maintaining that the petitioner, in the facts and circumstances, was not entitled thereunder for a fresh consideration for promotion as claimed by him.

6. Though additional pleadings were filed, the basic facts as outlined hereinabove were retained and, thus, dilation thereon is uncalled for.

7. The learned Tribunal by the impugned decision sustained the demur of the respondents and negated the challenge of the petitioner. In arriving at its ultimate conclusion to the above effect, the following factors were taken note of:--

(i) The cut off date for implementing the benefits of restructuring admittedly was 1.11.2003.

(ii) Restructuring of the line staff of the Rangiya Division was done as per bifurcated cadre in terms of the NF Railways Circular No. E/283/218(HQ)(C) dated 5.4.2004,

(iii) The petitioner was transferred to the Rangiya Division after the cut off date i.e. 1.11.2003.

(iv) The benefit of officiating promotion had been accorded to 19 Head Clerks at NF Railways, Maligaon vide order dated 22.11.2004. In the said promotion process no junior to the petitioner to the exception of one Smt. Ramila Thakuria, a Scheduled Caste candidate did figure. This amounted to consideration of the petitioner's case for restructuring benefit as on 1.11.2003 as he was admittedly at NF Railways, Maligaon as a part of the cadre thereat.

(v) Once a person has been considered for restructuring in one zone/division, merely on account of transfer to a newly created division he would not be entitled to concessional benefits under the scheme of the IOR for the second time.

(vi) Restructuring did not signify that each and every person in the cadre would be entitled to the benefit consequent thereupon.

(vii) Mere change in the total strength of the Rangiya Division by addition of 61 posts on transfer after 1.11.2003 was irrelevant vis-?-vis the petitioner's expectations for consideration for restructuring benefits in terms of the IOR.

(viii) The benefits of restructuring was to be made available in the parent division/zone and not in the newly created zone/division.

8. Mr. Chanda with particular reference to Para 1 and Para 19 of the IOR as well as the letter dated 23.2.2007 has insistently urged that in absence of a meaningful consideration of the petitioner's case for promotion to the higher post of Office Superintendent-II in the CPO, Maligaon, the denial of the benefit of restructuring is per se illegal, arbitrary and discriminatory and that the learned Tribunal having failed to address itself to this vital aspect of the lis, the impugned judgment and order is unsustainable in law and is liable to be set aside. According to the learned counsel, though on records the cadre of the newly created Rangiya Division was closed on 1.11.2003, it is apparent from the contents of the letter dated 23.2.2007 that all the 121 posts earmarked for it had not been released by the Alipurduar Division by then and that, therefore, the respondent Railways ought to have permitted the proposed exercise of according restructuring benefit vis-?-vis the staff who have joined the Rangiya Division after 1.11.2003. Restructuring of 61 posts of clerical cadre of the Personnel Branch at the Alipurduar Division as represented by the letter dated 8.8.2007 being wholly irrelevant vis-?-vis the petitioner's grievance, the learned Tribunal fell in error in rejecting the impugnement thereof without appropriately

scrutinizing the facts attendant thereon, he urged. As one of the reliefs prayed for by the petitioner before the learned Tribunal was annulment of this communication dated 8.8.2007, the learned Tribunal ought to have adjudged the validity or otherwise thereof in the overall conspectus of facts, he insisted. That the impugned judgment and order is vitiated by an erroneous interpretation of the IOR rendering it irreversibly incurable has also been underlined. Mr. Chanda by drawing the attention of this Court to the Memoranda dated 17.5.2007 and 6.9.2007 has submitted that as the revised process of restructuring promotion is evident therefrom, refusal of the same relief to the petitioner is grossly erroneous.

9. Mr. Sarkar per contra has reiterated chiefly on the basis of the letter dated 5.4.2004 of the General Manager (P), Maligaon that as recited therein the case of the petitioner was duly considered for promotion prior to 1.11.2003 while he was still in the cadre of CPO, Maligaon and as in terms of his seniority in service and otherwise he could not be accorded the same, as per Para 19 of the IOR, he was not entitled to be considered afresh for any restructuring benefit and, thus, the conclusion of the learned Tribunal is unassailable. As the petitioner admittedly was released from his cadre in the CPO, Maligaon after 1.11.2003, the proposal for consideration for restructuring benefits in terms of the letter dated 23.2.2007 vis-?-vis him and other similarly situated transferee/optees was obviously untenable and, therefore, the decision communicated vide letter dated 8.8.2007 is not flawed. That the restructuring of cadres was to be with reference to the sanctioned cadre strength as on 1.11.2003 was sought to be re-emphasized by the learned Standing Counsel, NF Railways with reference to the Memo No. PC-III/2003/CRC/6 dated 6.1.2012.

10. The pleadings on record and the arguments advanced on the basis thereof have received our due consideration. That on 1.11.2003 the petitioner admittedly was serving in the CPO, Maligaon is not in dispute. There is no wrangle at the Bar that he had opted for the Rangiya Division before 1.11.2003 but was in fact released by the CPO, Maligaon on 28.11.2003 and he eventually joined the said Division on 1.12.2003. In terms of Para 1 of the IOR dated 9.10.2003 the restructuring of cadre was to be with reference to the sanctioned cadre strength as on the date following the date on which the cadres in the headquarter offices of new Zonal Railways/new Divisions were closed i.e. 1.11.2003 qua the Rangiya Division. This paragraph further mandated that the restructuring would be restricted to the persons who had worked in a particular cadre on the cut off date. Para 19 which is of formidable significance is extracted hereinbelow for ready reference:

Due to re-organisation of Zonal Railways/Divisions cadre are in a fluid situation. It may, therefore, take some time for the cadres in the headquarter offices of New Zones and New Divisions to stabilize. In the circumstances, new Zonal Railways are required to ensure that the staff transferred to headquarter offices of new Zonal railways/new Divisions are not extended the double benefit of

restructuring. In case an employee has been given the benefit of restructuring on the old (parent) railway in terms of these orders, he will not be allowed the benefit of restructuring again on the headquarter offices of new Zonal Railways/new Divisions. In other words, no railway servant will be considered for double promotion as a result of this restructuring.

11. A plain reading of this paragraph of the IOR, to start with, does not mandate obligatorily the consideration of the case of any member of the staff transferred to the headquarter offices of new Zonal railway/new Divisions at the parent office. The inhibition is only against grant of double benefit of restructuring. The letter dated 5.4.2004 (Annexure-6 to the writ petition) in essence seems to suggest that the staff who had joined the Rangiya Divisional Headquarter before or after 1.11.2003 would get the benefit of restructuring at their original place of posting. This letter reaffirms that the cadre of the Rangiya Division had been closed with effect from 1.11.2003. Taking the clue from this letter, it is obvious that the respondent Railways thus have consistently contended against entitlement of the petitioner's consideration for restructuring benefit in terms of the letter dated 23.2.2007 asserting that his case had been once considered for promotion at CPO, Maligaon before his release on 28.11.2003. It transpires from their additional pleadings that as on 1.4.2003 in the PNO Guwahati Unit there were 75 Head Clerk (E) and in the seniority list circulated by the General Manager, Maligaon the name of the petitioner figured at serial No. 50 as an unreserved candidate and further that by order dated 22.9.2004, 19 Head Clerks (E) were promoted to OS-II (E) consequent on the restructuring. The respondents have candidly stated that having regard to the seniority position of the petitioner "his promotion was not due".

12. On a conjoint reading of the written statement filed before the learned Tribunal as well as the affidavit-in-opposition filed in the instant proceedings, it is not unimpeachably clear as to whether the case of the petitioner in view of his seniority position at the CPO, Maligaon had at all been considered for promotion to the next higher post of OS-II. This Court has not been led to any record to reinforce the plea of the respondents that the petitioner's case was in fact considered for promotion, he being within the zone of consideration therefor but in view of his lower placement in order of seniority he could not be accorded the same. In the face of this state of pleadings and the materials on record, it is not possible to conclusively hold that as contemplated in Para 19 of the IOR the petitioner's case had in fact been considered for restructuring benefit at the CPO, Maligaon. We leave it at that.

13. The letter dated 5.4.2004 referred to hereinabove notwithstanding, the minutes of the meeting with regard to cadres of Rangiya Division held on 3.2.2005 (Annexure-8 to the writ petition) cannot be disregarded at all. It would be apparent from the proceedings thereof that restructuring of the Ministerial Staff of the Rangiya Division was to be done vis-?-vis the posts available as on 1.11.2003 and in case the number of incumbents were more, the posts

transferred to it after 1.11.2003 were to be notionally taken into account for the process to the extent of number of men available in the concerned unit. This assumes significance in view of the proposal made by the Divisional Railway Manager (P), Rangiya vide his letter dated 23.2.2007 to the General Manager(P) N.F. Railways, Maligaon pointing out inter alia that as on 1.11.2003 out of the 71 posts identified to be transferred to the Rangiya Division only 10 had been transferred and that the balance 61 posts had been made available only thereafter. That the staff who had joined the Rangiya Division after 1.11.2003 did not get any restructuring benefit in their earlier place of posting i.e. in parent division/unit and thus they could not avail the said benefit with effect from 1.11.2003 based on 121 posts meant for the Railway Division (60+61) is also discernible from the aforementioned letter dated 23.2.2007. This letter further reveals that along with the 10 posts so released from the Alipurduar Division prior to 1.11.2003, in all 60 posts with the following break up was at the disposal of the Rangiya Division:

14. That the additional 61 posts as above were transferred to the Rangiya Division after 1.11.2003 is apparent as well from the letter dated 12.7.2007 of the Divisional Railway Manager (P), Alipurduar Junction (Annexure-19 to the writ petition). In this factual premise, the relevance of restructuring of 61 posts of clerical cadre of the Personnel Branch/APDJ based on a total of 172 posts vis-?-vis the claim of the petitioner for restructuring benefit as an optee/transferee to the Rangiya Division who had actually joined the same on 1.12.2003 passes one's comprehension.

15. The process of revised restructuring of the Engineering Department and the Operation Department at the Rangiya Division much after 1.11.2003 as is evident from the Memoranda dated 17.5.2007 and 6.9.2007 belies the plea of rigidity of that date i.e. 1.11.2003 vis-?-vis the exercise to that effect in terms of the IOR and the letter dated 5.4.2004 in particular. Viewed in this context, the denial of the petitioner's claim for restructuring benefit on the basis of the entire gamut of posts allotted to the Rangiya Division, in our view, cannot be approved. Not only the assertion of the consideration of the case of the petitioner for promotion at the CPO, Maligaon is demonstrably unconvincing, the proposal of the DRM(P), Maligaon as detailed in the letter dated 23.2.2007 on the basis of the recorded facts cannot be lightly brushed aside.

16. On a totality of the consideration of all aspects as recited hereinabove, we are left unpersuaded that the petitioner's claim for consideration for restructuring benefit is opposed to the letter and spirit of Para 19 of the IOR dated 9.10.2003. The petitioner having opted to join the Rangiya Division on its bifurcation from the Alipurduar Division while encadred in the cadre of Head Clerk at the CPO, Maligaon, we are of the unhesitant opinion that in the prevailing facts and circumstances, his challenge to the letter dated 8.8.2007 ought to be sustained and consequential directions should be issued for affording him an opportunity to avail the said benefit. Ordered accordingly.

17. The impugned judgment and order of the learned Tribunal is, thus, interfered with. The respondent Railways would consider the case of the petitioner for restructuring benefit on the basis of the 121 posts allotted to the Rangiya Division released after 1.11.2003, however, strictly in terms of the IOR dated 9.10.2003 and accord him his entitlements pursuant thereto as is permissible. The petition is allowed. No costs.